



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2014-0378; FRL-9929-81-Region 6]**

**Approval and Promulgation of Implementation Plans; Arkansas; Prevention of Significant Deterioration; Greenhouse Gas Plantwide Applicability Limit Permitting Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving one revision to the Arkansas State Implementation Plan (SIP) submitted by the Arkansas Governor to the EPA on January 7, 2014. This submittal revises the Arkansas Prevention of Significant Deterioration (PSD) Permitting Program to incorporate by reference federal plantwide applicability limit (PAL) permitting provisions to enable the State of Arkansas to issue PSD PALs to sources with greenhouse gas (GHG) emissions. The EPA has determined that the January 7, 2014 revision to the Arkansas SIP is consistent with federal requirements for PSD permitting. The EPA is also approving ministerial changes to the Code of Federal Regulations (CFR) to reflect recent EPA SIP approvals to the Arkansas PSD program and to show that SIP deficiencies identified in prior partial disapprovals have been addressed. We are finalizing this action under section 110 and part C of title I of the Clean Air Act (CAA or the Act).

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2014-0378. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Adina Wiley, 214-665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

The background for this action is discussed in detail in our April 27, 2015 proposal. *See* 80 FR 23245. In that document, we proposed to approve the January 7, 2014, Arkansas SIP revision; a submittal that included PSD permitting provisions adopted on June 28, 2013, at the Arkansas Pollution Control and Ecology Commission's ("Commission") Regulation Number 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control (hereinafter Regulation 19 at 19.904(A)(1) and (G)(1)). These revisions to the PSD program provide the Arkansas Department of Environmental Quality (ADEQ) the ability to issue GHG PSD PALs consistent with the “Prevention of Significant Deterioration and Title V Greenhouse Gas

Tailoring Rule Step 3 and GHG Plantwide Applicability Limits Final Rule” (77 FR 41051) and recent litigation surrounding the permitting of GHGs.<sup>1</sup> The January 7, 2014 submittal also included a non-substantive revision to the Regulation 19.904(E)(3) to correct a reference to federal air quality models for PSD permitting. The April 27, 2015, proposal and the accompanying Technical Support Document (TSD) present our rationale for approving these regulations as meeting the minimum federal requirements for the adoption and implementation of the PSD SIP permitting programs. This action was proposed under section 110 and part C of the Act. We did not receive any comments regarding our proposal.

## **II. Final Action**

The EPA is approving the January 7, 2014 submitted revisions to the Arkansas PSD Permitting Program at Regulation 19.904(A)(1), (E)(3), and (G)(1) into the Arkansas SIP. The EPA has determined that the January 7, 2014 revision is approvable because the submitted rules are adopted and submitted in accordance with the CAA and are consistent with the EPA’s regulations regarding PSD permitting for emissions of GHGs. Therefore, the EPA approves the following as a revision to the Arkansas PSD SIP:

- Substantive revisions to Regulation 19.904(A)(1) incorporating by reference the federal GHG PSD PAL permitting provisions,

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<sup>1</sup> As explained more fully in our April 27, 2015, proposed rulemaking; the U.S. Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions on June 23, 2014, in *Utility Air Regulatory Group v. Environmental Protection Agency*. See 134 S.Ct. 2427 (2014) (the “UARG” decision). The UARG decision effectively upheld PSD permitting requirements for GHG emissions under Step 1 of the Tailoring Rule for “anyway sources” and invalidated PSD permitting requirements for Step 2 sources. In accordance with the UARG decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of the Tailoring Rule, but not the regulations that implement Step 1 of the Tailoring Rule. See *Coalition for Responsible Regulation v. EPA*, D.C. Cir., No. 09-1322, 06/26/20, judgment entered for No. 09-1322 on 04/10/2015. (The “Coalition” decision). Neither the UARG decision nor the Coalition judgment directly impacted the ability to issue PALs for GHGs for existing major stationary sources. We anticipate that the EPA will need to revise the PAL provisions in the future to address the specifics of these decisions, but this does not affect today the finalization of the State’s PAL provisions that can be used to provide PALs for GHGs consistent with the UARG and Coalition decisions. Therefore we can finalize approval of the AR GHG PAL provisions at this time.

- Revisions to Regulation 19.904(E)(3) to update the reference to federal PSD air quality models at 40 CFR 52.21(l)(2), and
- Substantive revisions to Regulation 19.904(G)(1) establishing the requirements for GHG PSD PAL permits consistent with federal requirements.

The EPA is also finalizing our approval of ministerial changes to 40 CFR 52.170(e) and 40 CFR 52.172(b) which reflect that deficiencies identified in our partial disapproval of the December 17, 2007 and March 28, 2008 Arkansas SIP submittals for the 1997 8-hour ozone NAAQS were addressed by our approval of Arkansas PSD program revisions which provide the authority to regulate and permit emissions of GHGs on April 2, 2013 (78 FR 19596). We are also approving a ministerial change to 40 CFR 52.181(a) to reflect that the EPA approved a revision to the PSD program for the authority to regulate and permit emissions of GHGs on April 2, 2013 (78 FR 19596).

The EPA is approving these actions under section 110 and part C of the Act, and for the reasons stated above.

### **III. Incorporation by Reference**

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Arkansas regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 19, 2015.

**Samuel Coleman, P.E.**  
*Acting Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart E – Arkansas**

2. Section 52.170 is amended by revising:

a. The entry for Section 19.904 in the table titled “EPA-Approved Regulations in the Arkansas SIP” in paragraph (c); and

b. The entries for “Infrastructure for the 1997 Ozone NAAQS” and “Interstate transport for the 1997 ozone NAAQS (Noninterference with measures required to prevent significant deterioration of air quality in any other State)” in the third table titled “EPA-Approved Non-Regulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP” in paragraph (e).

The revisions read as follows:

**§ 52.170 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP**

State Citation	Title/Subject	State submittal/ effective date	EPA approval date	Explanation
Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
* * * * *				
Chapter 9: Prevention of Significant Deterioration				
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Section 19.904	Adoption of Regulations	12/01/2014	[Insert date of <b>FR</b> publication] [Insert <b>FR</b> page number where document begins]	
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(e) \* \* \*

**EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *	* *			
Infrastructure for the 1997 Ozone NAAQS	Statewide	12/17/07 3/28/08	8/20/12 (77 FR 50033)	Approval for CAA elements 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), and (M). Approval for CAA elements 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality), (D)(ii), and (J) for the 1997 ozone NAAQS, except as it relates to Greenhouse Gas (GHG) emissions. The GHG PSD deficiency was addressed on April 2, 2013 (78 FR 19596).
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Interstate transport for the 1997 ozone NAAQS (Noninterference with measures required to prevent significant deterioration of air quality in any other State)	Statewide	4/5/11	8/20/12 (77 FR 50033)	Approved except as it relates to GHGs. The GHG PSD deficiency was addressed on April 2, 2013 (78 FR 19596).
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### **§52.172 [Amended]**

3. Section 52.172 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

4. Section 52.181 is amended by redesignating paragraph (a)(5) as paragraph (a)(7) and adding paragraphs (a)(5) and (6) to read as follows:

### **§ 52.181 Significant deterioration of air quality.**

(a) \* \* \*

(5) November 6, 2012 – submittal of Regulation 19, Chapter 9, Prevention of Significant Deterioration which provided the authority to regulate greenhouse gas emissions in the Arkansas PSD program.

(6) January 7, 2014 – submittal of Regulation 19, Chapter 9, Prevention of Significant Deterioration which updated the Arkansas PSD program to provide for the issuance of greenhouse gas plantwide applicability limit permits.

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